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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 344

ARTHUR L. BELL, *et al.*,

Petitioners,

vs.

R. B. HOOD, *et al.*,

BRIEF FOR PETITIONERS.

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No. 344

ARTHUR L. BELL, *et al.*,

Petitioners,

vs.

R. B. HOOD, *et al.*,

BRIEF FOR PETITIONERS.

Jurisdiction.

Jurisdiction of this Court is invoked under Judicial Code, Section 240 (a); 28 U. S. Code, Section 347 (a).

The judgment of the Circuit Court of Appeals below was entered on June 7, 1945 [R. 11, 179]; this Court granted certiorari on October 22, 1945.

Opinions of the Courts Below.

The opinion of the Circuit Court of Appeals below is reported at 150 Fed. (2d) 96. It appears in the Record at 168. The oral opinion of the District Judge is unreported. Its text is in the Record at 145.

Question Presented.

Has a United States District Court jurisdiction in a civil suit seeking damages against Federal officers alleged

to have violated, through an abuse of power[1] rights secured by the Constitution?

Statement of the Case.

This petition brings to this Court for decision the question as to whether a United States District Court has jurisdiction in a suit for damages against federal officers, charged in a civil complaint to have violated the rights of the citizen to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment, and to be free from deprivation of liberty without due process of law by unlawful imprisonment, in violation of the Fifth Amendment.

The United States District Court for the Southern District of California ordered the petitioners' complaint dismissed, of its own motion, although no objection to the jurisdiction of the District Court, on the ground that the cause did not arise under the Constitution or laws of the United States,[2] was made by the defendants, appearing through the United States Attorney [R. 136, 149]. The Ninth Circuit Court of Appeals affirmed [R. 168, 169].

The complaint [R. 3-30], is thus aptly summarized by the Court of Appeals below [R. 168, 170]:

> "It is set out in the complaint that defendants, through the medium of unlawful and unreasonable searches and seizures, have violated the Fourth

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[1]The phrase "abuse of power" is borrowed from Chief Justice Hughes in *Philadelphia Company v. Stimpson*, 223 U. S. 605, 619. There this Court ruled that the federal courts have jurisdiction over federal officers to enjoin threatened action that is in "abuse of power."

[2]As required by Title 28, United States Code, Sec. 41 (1). The text of the section is set forth in the Appendix.

Amendment to the personal injury of the several plaintiffs and that such defendants have invaded plaintiffs' immunities as provided by the Fifth Amendment to the effect that no person '* * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law: * * *.' It is therefore alleged and argued by the plaintiffs that they have a right to recover personal judgment in the federal district court against the defendants involved for injuries sustained. . . . each plaintiff stood indicted as of December 18, 1942, by a federal grand jury of violating Section 34, Title 50, U. S. C. A. No trial had been held.

"It is alleged that the defendants, on the day the indictment was returned, 'unlawfully conspired'[3] with each other to act beyond their authority as said Federal Bureau of Investigation agents and police officers respectively, and agreed that they would abridge the Constitutional rights of the plaintiffs as guaranteed by the Fourth and Fifth Amendments to the Consti-

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[3]The recitals of "conspiracy" in the complaint were unnecessary to state a cause of action against the defendants. These allegations may, and should be, deemed mere surplusage. In order that the "conspiracy" portions of the complaint might not becloud the issues in this case, and in an effort to prevent the Circuit Court below from positing its decision upon an irrelevant and spurious issue, the petitioners filed with the Clerk of the Circuit Court below a verified "Proposed Amended Complaint for Damages for False Imprisonment and Unlawful Search and Seizure by Federal Officers"; and also filed a Notice of Motion and a motion that the Circuit Court order a reversal of the judgment of the District Court with instructions to said District Court to grant the appellants (petitioners) leave of court to file an Amended Complaint. The text of the "Proposed Amended Complaint" is set forth in Appendix "A," attached to said Motion. The proceedings in the Circuit Court upon the Notice of Motion and Motion appear in the Record, subsequent to page 180. The Circuit Court below denied the Motion [R. 178, 179] without comment.

tution of the United States to be free from the deprivation of liberty and property without due process of law, and to be free from unreasonable searches and seizures, and agreed unlawfully to simultaneously, in the early morning of December 18th, 1942, search the homes of the individual plaintiffs herein without any warrants of search or seizure, and unlawfully to seize the papers, documents and effects of said plaintiffs and of 'Mankind United', and falsely to imprison the individual plaintiffs by unlawfully arresting some of the individual plaintiffs without a warrant of arrest and unreasonably to delay the taking of all of the individual plaintiffs before a committing officer, in order to effectuate the unlawful searches and seizures aforesaid.'

"'That thereafter, and on the 18th day of December, 1942, as will appear more particularly hereinafter, the defendants and each of them, in order to carry out the terms and conditions of the illegal conspiracy aforesaid, and solely for the purpose of carrying out said terms and conditions, did arrest and imprison the individual plaintiffs herein, and did search the homes of said plaintiffs, and seize and carry away books, papers and effects of said individual plaintiffs and of said "Mankind United".'

"It is alleged that as to plaintiff Bell the following occurred. Defendants Cruise, Bowser, Langdon, Gieson, Greer, and two named fictitiously broke doors of his residence, entered, and arrested Bell. The defendants had no search warrant or warrant of arrest. They searched the entire premises leaving them in

confusion and disorder. They took Bell and held him for several hours away from the premises and did not take him before a magistrate. They took thousands of documents, papers, and records belonging to 'Mankind United', which were entrusted to Bell and took $8,500.00 in money. They took property belonging to Bell and his wife including safe deposit boxes. During a considerable period Bell was held incommunicado and not allowed to see his attorney who was just outside the door, and he was questioned. The allegations are to the effect that at about the same time all the other plaintiffs were subject to essentially the same illegal treatment, though in detail varying, by one or more of the defendants.

"It is apparent that each plaintiff personally seeks compensatory damages for alleged illegal arrest, false imprisonment, the forceable removal of his person from one place to another, the searching of his premises illegally and unreasonably, the seizing of property belonging to him and others, and the questioning without affording him the aid or advice of an attorney."

The Circuit Court[4] below acknowledged that:

"There can be no question but that the complaint states strong cases and if the allegations have any foundation in truth; the plaintiffs' (petitioners') legal rights have been ruthlessly violated." [R. 173.][5]

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[4]The decision of the Circuit Court will be analyzed and criticized, *infra*, at pp. 15-17.

[5]All italics supplied.

Summarized differently, the complaint charges that the defendants, FBI agents, "acted in excess of their actual authority, but in the course of their employment and in furtherance of the official purposes of the bureau they serve" in abridging the petitioners' federal constitutional rights.

This is the version of the Northern and Southern California branches of the American Civil Liberties Union, in their *amici curiae* brief, on file herein, which we accept.

Specifications of Errors.

The Judgment of the Circuit Court of Appeals is contrary to law in that:

I.

The United States District Court had jurisdiction over the petitioners' cause of action against the defendants—agents of the Federal Bureau of Investigation—said cause of action being an action for damages resulting from alleged unlawful searches and seizures, in violation of the Fourth Amendment, and from alleged false imprisonment in violation of the Fifth Amendment.

II.

The Circuit Court below erred in denying the petitioners' Motion to Reverse Judgment, and in refusing to instruct the United States District Court below to grant leave to the petitioners to file an amended complaint.

ARGUMENT.

The United States District Court Had Jurisdiction Over the Petitioners' Cause of Action Against the Defendants—Agents of the Federal Bureau of Investigation—Said Cause of Action Being an Action for Damages Resulting From Alleged Unlawful Searches and Seizures, in Violation of the Fourth Amendment, and From Alleged False Imprisonment in Violation of the Fifth Amendment.[6]

The petitioners' cause of action would seem to meet the requirements as to original federal jurisdiction first enunciated by Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheat. (19 U. S.) 264, 379:

> "A case in law or equity . . . may truly be said to arise under the constitution or a law of the United States, whenever its correct decision depends upon the construction of either."

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[6]The jurisdiction of the District Court is thus stated in the original complaint [R. 3]:

> "Jurisdiction of this Court is founded upon a Federal question arising under the Fourth and Fifth Amendments to the Constitution of the United States; and Title 5, U. S. Code, Section 300a[6a] as fully appears hereinafter. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00). Jurisdiction of this Court is founded upon the Federal question involving the rights of the individual plaintiffs and each of them to be free from deprivation of liberty without due process of law by false and unlawful imprisonment; and the Constitutional rights of all of the plaintiffs to be free from unreasonable searches and seizures. All of the persons who participated in the acts to be hereinafter complained of, with the exception of the defendant Merle Armstrong, were at the time of the commission of said acts, and at all times herein have been, officers of the Federal Government, to-wit, Special Agents of the Fed-

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[6a]U. S. C., Secs. 300 and 300a, are set forth in the Appendix herein.

In the case at bar the correct decision of the case depends upon the construction to be given by the federal courts to the Fourth and Fifth Amendments to the United States Constitution, and to Title 5, Sections 300, 300a, of the United States Code.

The complaint, to put the case somewhat differently, discloses federal jurisdiction because its allegations come within the tests of federal jurisdiction as outlined by Justice Cardozo in *Gully v. First National Bank*, 299 U. S. 109. As Justice Cardozo put it (at p. 112):

"How and when a case arises 'under the Constitution or laws of the United States' has been much con-

eral Bureau of Investigation, U. S. Department of Justice, and claim to have acted under and by virtue of the Provisions of Sections 300 and 300a of Title 5, U. S. Code aforesaid, and have acted in concert as is more particularly set forth hereinafter."

The jurisdiction of the District Court is set forth more fully and more carefully in the verified "Proposed Amended Complaint" submitted to the Court of Appeals below, as follows:

"Jurisdiction of this Court is founded upon a Federal question arising under the Fourth and Fifth Amendments to the Constitution of the United States; and Title 5, U. S. Code, Sections 300 and 300a, as more fully appears hereinafter. The matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars ($3000.00). Jurisdiction of this Court is founded upon the Federal question involving the rights of the individual plaintiffs and each of them to be free from deprivation of liberty without due process of law by false and unlawful imprisonment in violation of the Fifth Amendment to the Constitution; and the rights of all of the plaintiffs to be free from unreasonable searches and seizures, in violation of the Fourth Amendment. All of the defendants at all times herein were and are officers of the Federal Government, to-wit, Special Agents of the Federal Bureau of Investigation, U. S. Department of Justice,[6b] and claim to have acted under and by virtue of the provisions of, and under the authority of Section 300 and 300a of Title 5, U. S. Code aforesaid, and as said federal officers, and solely because of said authority, and as said officers.

[6b]The defendant Merle Armstrong, Los Angeles City Police Officer, is dropped as a defendant in the Proposed Amended Complaint.

sidered in the books. Some tests are well established. To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action."

". . . The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction *or* effect, 'and defeated if they receive another' . . . A genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto, . . . and the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal."

"Said defendants and each of them, however, abused their power and authority as said federal officers, and as said agents of the Federal Bureau of Investigation, as will appear more particularly hereinafter.

"The District Court of the United States for the Southern District of California has jurisdiction in the premises, more particularly, in that it is a suit of a civil nature arising under the Constitution and the laws of the United States, in the following respects:

"The construction or effect of the following constitutional and statutory provisions is in issue:

"A. Constitutional Provisions.

1. Whether or not the searches and seizures by the defendants hereinbelow complained of were unreasonable, in violation of the Fourth Amendment.

2. Whether or not the imprisonment of the plaintiffs by the defendants to be hereinbelow set forth, deprived the plaintiffs of liberty without due process of law, in violation of the Fifth Amendment.

"B. Statutory Provisions.

1. Whether or not either or both the searches and seizures by the defendants, and the imprisonment of the plaintiffs by the defendants, violated the rights of the plaintiffs conferred upon them by Title 5, U. S. Code, Sections 300 and 300a, by violating the limitations of power imposed upon said defendants by said laws."

[Appendix "A" attached to Motion to Reverse Judgment, printed following p. 180 of the Record.]

If the scope of Articles IV and V of the Bill of Rights and Title 5, U. S. Code, Sections 300 and 300a, are given a construction or effect by the federal courts favorable to the petitioners, the petitioners' rights will be supported and they will be entitled to prevail; if, on the other hand, the federal courts give these same provisions of the Federal Constitution and these same federal statutes a different construction or effect, adverse to the petitioners and favorable to the defendants, the petitioners' claims will be defeated.

Hence the complaint raises a substantial controversy as to the scope, meaning or effect of provisions of the Federal Constitution, and requires the federal courts to pass upon, construe and interpret certain particular federal statutes. A consideration and interpretation of these federal statutes, as well as the provisions of the Fourth and Fifth Amendments to the Constitution, by the District Court, was necessary, indispensable and inescapable. The controversy between the petitioners and the defendants as to the meaning, scope and effect of the constitutional provisions and the federal statutes referred to, is substantial, direct, genuine, and is disclosed affirmatively and completely in the complaint itself.

Moreover, in the instant case, the search alleged to have been carried out by the defendants is asserted to be "unreasonable" within the proscriptions of the Fourth Amendment. The complaint accordingly called for a construction by the federal courts, including the District Court below, as to the meaning and application of the phrase "unreasonable"—a construction which could have been made adequately by the District Court below only after a hearing on the merits, and not by the District Court's summary dismissal of the complaint.

Where the construction by the courts of a phrase in a federal statute is required, the cause may be deemed to "arise" under a law of the United States, within the meaning of 28 U. S. C., Sec. 41 (1). This would seem to be the import of the decision of this Court, in *Tunstall v. Brotherhood of Locomotive Firemen and Engineers*, 323 U. S. 200. There this Court ruled that a federal District Court had jurisdiction because called upon to construe and apply the phrase "representative" in the Railway Labor Act; here the District Court was called upon to construe and apply the phrase "unreasonable" in the Fourth Amendment.

Said the Chief Justice, for this Court, in the *Tunstall* case:

> "We also hold that the right asserted by petitioners which is derived from the duty imposed by the Railway Labor Act on the Brotherhood, as bargaining representative, is a federal right implied from the statute and the policy which it has adopted. It is the federal statute which condemns as unlawful the Brotherhood's conduct. 'The extent and nature of the legal consequences of this condemnation, though left by the statute to judicial determination, are nevertheless to be derived from it and the federal policy which it has adopted.' "[7]

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[7]The Department of Justice, in a brief *amicus curiae* filed in the *Tunstall* case thus stated the applicable law:

> "The cause of action in the *Tunstall* case thus 'Clearly has its origin (in) and is controlled by the Railway Labor Act, and this is sufficient.' "

We paraphrase thus the language of the Department of Justice as applied to the instant case: The cause of action of the petitioners thus clearly has its origin in, and is controlled by, the Fourth and Fifth Amendments; and this is sufficient.

On the facts, it might be claimed that the instant case is stronger than *Tunstall's* case: for in the latter, the suit was for damages (and injunction) against *private parties*; here it is for damages against *federal officers*, who, as alleged in the complaint, claim to have acted as such and under their authority as such officers, and in the pursuit of their employment as federal officers.

In any event, the language of this Court in the *Tunstall* decision may be thus paraphrased to apply to the instant case:

The rights asserted by the petitioners are derived from the guarantees of the Fourth and Fifth Amendments; and arise from a duty imposed by these Articles of the Bill of Rights, upon the defendants, as law enforcement officers, not to abridge those guarantees. These rights of the petitioners are expressed in the Constitution; and the duty imposed upon the defendants not to abridge them, is implied from the Constitution. It is the Federal Constitution that condemns the conduct of the defendants complained of in the petitioners' complaint as unlawful. And, finally, the extent, nature, and legal consequences of the constitutional condemnation of the Fourth and Fifth Amendments, though left to judicial determination, are nevertheless to be derived from those Amendments, and from the federal policy they have adopted. The petitioners' case is therefor one arising under the federal Constitution.

Certainly the complaint poses a "federal question," within the requirements set forth in *Sola Electric Co. v. Jefferson*, 317 U. S. 173, 176:

> "When a federal statute condemns an act as unlawful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal ques-

tions, the answers to which are to be derived from the statute and the federal policy which it has adopted."

In the instant case, the extent and nature of the legal consequences of the condemnation in the Federal Constitution of "unreasonable" searches and seizures, though left to judicial determination, must perforce raise a "federal question."

That a United States District (or Circuit) Court has jurisdiction in a suit for damages against federal officers acting in excess of their authority seems never heretofore to have been questioned in, or by, this Court. Indeed, such jurisdiction has been assumed by this Court in a line of cases beginning with *Little v. Barreme*, 2 Cranch 170 (1804)—a noteworthy decision written by Chief Justice Marshall upholding damages against a United States Naval officer in the sum of $8,504.00 for his unlawful seizure of a vessel. So in *Tracy v. Swartwout*, 10 Pet. 80 (1836), such jurisdiction was unquestioned. Again in *Mitchell v. Harmony*, 13 How. 115 (1851), a judgment of the United States Circuit Court was affirmed by this Court against military officers in the sum of $90,806.44, for unlawful seizure of private property.[8]

In *Belknap v. Schild*, 161 U. S. 10 (1895), jurisdiction of a United States Circuit Court in a suit for damages against a federal officer was impliedly assumed by this Court when it reversed a judgment because the case was in equity, "without prejudice to an action at law against the defendants," presumably in a United States Circuit Court.

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[8]In *Mitchell v. Harmony* there was a diversity of citizenship.

Another such suit in this Court, from a United States Circuit Court is *Cammeyer v. Newton*, 4 Otto (94 U. S.) 225 (1877).

No decision of this Court has assumed or intimated any lack of jurisdiction in the federal courts to entertain a suit for damages against *federal* officers, alleged to have violated any federal constitutional right of any citizen.[9]

Furthermore, the cases which sustain the jurisdiction of federal District Courts in suits for damages against federal officers, involving the construction or effect of process or of bonds, are not to be distinguished away. They are *Bock v. Perkins*, 139 U. S. 628; *Howard v. United States*, 184 U. S. 676 and *U. S. ex rel. Rogers v. Conklin*, 1 Wall. (68 U. S.) 714. Surely if there is jurisdiction in the federal courts, in suits against federal officers for damages, under process or instruments *authorized* by a federal statute, there must then the more certainly be jurisdiction, where the suit arises out of a federal statute (or the Constitution)[10] *directly*.

Still other decisions of this Court support the jurisdiction of the District Court below. They sustain the jurisdiction of the federal courts to accord relief against federal officers acting in abuse of power, on the equity side of the court's process. They are: *Philadelphia Company v. Stimson*, 223 U. S. 605; *Goltra v. Weeks*, 271 U. S. 536, and *Waite v. Macy*, 246 U. S. 606; *American School*

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[9]On the precise question as to whether a federal District Court has jurisdiction in a suit against federal officers seeking damages resulting from an alleged unreasonable search and seizure, there seems to be only one decision suporting the opinion of the Circuit Court below. It is by a United States District Court, *Taylor v. DeHart*, 22 Fed. (2d) 206 (D. C. Mo., 1926).

[10]The source of all federal statutes.

of Magnetic Healing v. McAnnulty, 187 U. S. 94, and *Panama Refining Co. v. Ryan*, 293 U. S. 388 and a line of similar cases. It would seem that it can make no difference whether the suit against a public officer for "abuse of power" is for damages resulting from an abuse committed, or is for an injunction to restrain an abuse threatened; for Title 28, U. S. C. A., Sec. 41 (1) confers jurisdiction upon the United States District Courts:

> "where the matter in controversy . . . arises under the Constitution or laws of the United States . . . of *all* suits of a civil nature at *common law or equity*." (Italics ours.)

Cf. also *Perkins v. Elg*, 307 U. S. 325, and *Hannegan v. Esquire, Inc.*, No. 399, this term.

The heart of the question is whether a federal right is in issue: if the federal right is *threatened* by a federal officer acting beyond his authority, the citizen's remedy is by *injunction*, on the equity side of the federal court; if the federal right *has already been abridged*, the remaining judicial remedy against the federal officer, is by an action for *damages*, on the law side of the federal court.

The Decision of the Circuit Court Below Analyzed.

1. The decision of the Circuit Court finds strict legal support in only one court decision—that of a United States District Court. *Taylor v. DeHart*, 22 Fed. (2d) 206 (D. C. Mo.) is the only reported decision holding that a suit against federal officers for damages resulting from unlawful search and seizure may not be prosecuted in a federal District Court.

2. The Circuit Court accepts, in principle, decisions of this Court [R. 174], *Cohen v. Virginia*, 19 U. S. 264; *Osborn v. Bank of the United States*, 9 Wheat. 738,

but fails to apply the law of these cases to the instant case.

3. The Court below seeks to distinguish the *Tunstall* case, because the latter arose under a law regulating commerce.

But the particular federal statute under which a cause of action arises can make no difference. Title 28, Sec. 41 (1) gives no priority to any federal law.[11]

28 U. S. Code, Sec. 41 (8) is comparable to 28 U. S. Code, Sec. 41 (1). Section 41 (8) confers original jurisdiction on the United States District Courts in suits "arising under any law regulating commerce;" Sec. 41 (1) (a) confers such jurisdiction where a suit "*arises* under the Constitution or laws of the United States." (Italics supplied.) Whether or not a suit thus "arises" poses the same question of law, and of statutory construction, under either Sec. 41 (1) (a), or under Sec. 41 (8).

The only difference between the two sub-sections is that subsection (8) contains no minimum monetary requirement as does subsection (1) (a). That the instant complaint discloses a controversy exceeding the sum of $3000 is not questioned. (Compare the statement of the Circuit Court below:) "The damages prayed for far exceed the jurisdiction requirements as to value in controversy." [R. 169.]

4. In so far as the Circuit Court below relies heavily, in its reasoning, on the "conspiracy" allegations in the original complaint [as for example at R. 174, 171], its decision is wanting in support, in view of the "Proposed Amended Complaint" which the petitioners sought permis-

[11]So far as jurisdiction of the federal District Courts are concerned, the Constitution is at least on a par with federal statutes. Cf. 28 U. S. C., Sec. 41 (1).

sion to file in the District Court, in which Amended Complaint all conspiracy recitals are omitted [p. 12 of Appendix "A" attached to Motion to Remand Cause, appearing following p. 180 of the Record herein].

The Circuit Court proffers no reason for its refusal to remand the cause to the District Court, to afford the petitioners an opportunity to file an Amended Complaint omitting all the conspiracy features of the original complaint [R. 178].

The "Proposed Amended Complaint" outlined in specific detail the constitutional and statutory provisions, the construction or effect of which are put in issue by the Amended Complaint, as follows:

"A. Constitutional Provisions.

1. Whether or not the searches and seizures by the defendants hereinbelow complained of were unreasonable, in violation of the 4th Amendment.

2. Whether or not the imprisonment of the plaintiffs by the defendants to be hereinbelow set forth, deprived the plaintiffs of liberty without due process of law, in violation of the 5th Amendment.

"B. Statutory Provisions.

1. Whether or not either or both the searches and seizures by the defendants, and the imprisonment of the plaintiffs by the defendants, violated the rights of the plaintiffs conferred upon them by Title 5, U. S. Code, Sections 300 and 300a, by violating the limitations of power imposed upon said defendants by said laws." [Appendix "A," p. 13, attached to Motion to Reverse Judgment, appearing in the Record following p. 180.]

The complete text of the jurisdictional allegations both in the original complaint and the proposed amended complaint are set forth in footnote 6, at pp. 7-9, *supra*.

Conclusion.

The defendants have authority, power and prestige on their side; the petitioners are associates of a minority group, at the moment convicted of "sedition"[12]—the victims, they believe, of wartime prejudices and passions.

But the defendants, no matter their power or prestige, are not above the law; and the petitioners no matter their guilt or innocence, are not outside the pale of constitutional protection.

Under our form of government, the only remaining governmental agency with the authority and duty to bring the defendants to account at the bar of justice on the one hand, and to accord to the petitioners, on the other hand, the reality of constitutional right[12a]—is the courts.

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[12]Their appeal from the conviction is now pending before the Ninth Circuit Court of Appeals, *Bell v. United States*, No. 10432, 9 C. C. A. Charged with "sedition," the petitioners claim to be the victims of a political persecution. The constitutional guarantee against unlawful searches and seizures demands the more scrupulous protection at the hands of the courts where, as claimed by the petitioners, such searches are "used by a government determined to suppress political opposition under the guise of sedition." (Judge Hand in *U. S. v. Kirschenblatt* (C. C. A. 2), 16 Fed. (2d) 202, 203.) Cf. in accord, Zechariah Chafee, Jr. in "Freedom of Speech in the United States," at p. 242, dealing with the experiences of John Wilkes.

[12a]The importance of the constitutional immunity from unreasonable searches is attested to by a long line of decisions by this Court:

Boyd v. United States, 116 U. S. 616 (1886);
Weeks v. United States, 232 U. S. 383 (1914);
Silverthorne Lumber Co. v. United States, 251 U. S. 385 (1920);
Gouled v. United States, 255 U. S. 298 (1921);
Federal Trade Commission v. Amer. Tobacco Co., 264 U. S. 298 (1924);
Byers v. United States, 273 U. S. 28 (1927);

The District Court below had ample jurisdiction so to do.

What is there in law, in reason, and in common fair dealing[13] to prevent this Court from so ruling?[13a]

Go-Bart Importing Co. v. United States, 282 U. S. 344 (1931);
United States v. Lefkowitz, et al., 285 U. S. 452 (1932);
Grau v. United States, 287 U. S. 124 (1932);
Sgro v. United States, 287 U. S. 206 (1932);
Taylor v. United States, 286 U. S. 1 (1932);
Nathanson v. United States, 290 U. S. 41 (1933).

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[13]To the petitioners, the effect of an action by this Court, relegating them to pursue their cause in the state courts, will be more than an academic ruling on the appropriate forum to assert their claims. A cause of action for illegal abridgment of personal rights is barred by California law, by a one year Statute of Limitations. (California Code of Civil Procedure, Sec. 340.) This statutory period had elapsed prior to the ruling of the District Court below. The alleged unreasonable searches and seizures took place on December 18, 1942. The instant complaint was filed seasonably in the United States District Court below, on April 7, 1943 [R. I, 30]. The District Court, delaying many months, did not order the complaint dismissed, of its own motion until *March 20, 1944*, when the California one-year Statute of Limitations had run. Upon the filing of a suit in the state courts the Superior Court of Los Angeles County, subsequent to the District Court's ruling, the defendants herein, again represented by the United States Attorney, filed a demurrer urging the one year Statute of Limitations. The Los Angeles Superior Court sustained the demurrer, so far as the cause of action in the State Court involved abridgment of personal rights. *Bell v. Adams*, Los Angeles Superior Court, No. 492469.

[13a]That "lawlessness in law enforcement" has been widespread in the United States is a matter of common knowledge. The extent of such lawlessness was exposed by the "National Commission on Law Observance and Enforcement," in its "Report on Lawlessness in Law Enforcement" (United States Gov't Printing Office, Washington, 1931). Unlawful searches and seizures constitute one of the acts of official lawlessness considered by a subcommittee of the National Commission ("Report on Lawlessness in Law Enforcement," *supra*, p. 340.)

The following, amongst other discussions of the extent of official lawlessness, appears in the law reviews:

Said Justice Cardozo in the *Gully* case (299 U. S. 109, 117):

> "What is needed (in determining whether a case arises under the Constitution or law of the United States) is something of that common sense accommodation of judgment to kaleidoscopic situations which characterizes the law in its treatment of problems of causation."

Said the Solicitor General of the United States in the Department of Justice's brief in the *Tunstall* case (Brief of *Amicus Curiae*, p. 42):

> "Obviously the enforcement of duties created by the Federal Act (the Railway Labor Act) should not be left exclusively to the State Courts."

"Responsibility for a 'vicious policeman'"; 50 American Law Rev. 127, Jan. 1916.

"The 'Third Degree' in America," 91 Justice of Peace (Eng.), 847, Nov. 5, 1927.

"Official Lawlessness," 33 Law Notes 201, Feb. 1930.

"The Third Degree" (Editorial), 32 Law Notes 202, Feb. 1929.

"Abstract of the 'Wickersham' Police Report." August Vollmer. 22 Jour. Crim. Law 716-23. Jan. 1932.

"Our Lawless Police," a review by L. Hazard, 3 Mo. Bar Jour. 149, 151. Sept. 1932.

"The Third Degree," by R. W. Bishop, 18 Boston U. Law Rev. 630-640, June, 1938.

"Confessions, and Methods Employed in Procuring Them." 4 So. Calif. Law Rev. 83.

"How Can the Third Degree Be Eliminated," by Sam B. Warner, 1 Bill of Rights Rev. 24.

Cf. "Concerning Searches & Seizures," 34 Harv. Law Rev. 361.

See also: Jerome Hopkins' "Our Lawless Police." Viking Press, 1931.

While the Department of Justice, through its vigorous Civil Rights Section, has done much to curb lawlessness by *state* officers (see "Civil Liberties Section of the Department of Justice," by Henry A. Schweinhaut, 1 Bill of Rights Rev. of American Bar Ass'n, 207 [Spring 1941]; Cf. *Screws v. United States*, 322 U. S. 718), there has been no comparable governmental agency to check the activities of over-zealous, but nonetheless lawless, on occasion, federal officers. Hence there is a special obligation in the *federal* courts to inquire into the conduct of *their* officers.

Just as obviously, common sense calls for a ruling from this Court, that the federal District Court below had jurisdiction of this cause. Is it "common-sense" to shut the doors of the *federal* courts to the citizen when his complaint is that a *federal* official, in the course of *federal* employment, acted under color of *federal* authority, but in excess of *federal* power, and in violation of the citizen's federal rights?[14]

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[14]The instant cause poses the problem of comity between the federal and state courts, in reverse of the phase in issue in *Watson v. Buck*, 313 U. S. 387; *Douglas v. Jeanette*, 319 U. S. 157, and companion cases. Here we have no congressional policy leaving primary jurisdiction to state tribunals. On the contrary, congressional policy is to the effect that the United States District Courts shall have primary jurisdiction over violation by federal officers of the Fourth Amendment.

Cf. *Lefkowitz v. United States*, 285 U. S. 452, upholding the jurisdiction of the federal courts to order the return of papers illegally seized, without a search warrant. Cf. 18 U. S. C., Sec. 626, conferring jurisdiction on the federal courts to order the return of documents illegally seized, under a search warrant. See also, 18 U. S. C., Sec. 353a and Sec. 631, conferring jurisdiction on the federal courts for the prosecution of federal officers for illegal searches, without, and with, respectively, search warrants.

It seems passing strange, accordingly, that a controversy involving the conduct of *federal* officers should be relegated to the *state* courts for airing and arbitrament. Common sense and logic would seem to suggest that the appropriate forum for misconduct by *state* officers should originally be the *state* courts; and, contrariwise, misconduct by *federal* officers should be passed upon by the *federal* courts.

The reluctance which this Court has shown in removing from the state courts original jurisdiction to determine the ambit of state problems, should be applied equally by the exercise of federal judicial self-restraint in thrusting upon the state courts, the burdens of airing controversies involving the misconduct of federal officers.

In the instant case the federal nature of the controversy is further seen from the fact that the federal government, through the United States Department of Justice, has defended the cause at all stages of the proceedings. Thus the defendants appeared by the United States Attorney for the Southern District of California in the trial court. [R. 31-32.] Similarly, the United States

The judgment of the Circuit Court of Appeals below should be reversed.[15] In the alternative, the order of the

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Attorney represented the defendants in the Circuit Court below. [R. 163.]

In this Court the defendants are represented by the Solicitor General.

Only because the Attorney General deemed the United States "interested" in the defense herein would such appearances be warranted.

5 U. S. C., Sec. 309; Cf. also 5 U. S. C., Sec. 306.

Moreover, by 28 United States Code, Section 76, the defendants, as "officers of the courts" of the United States, are in effect immunized from suit in the state courts. They may summarily remove a suit filed against them seeking damages for unlawful arrest and unreasonable searches, from the state courts, to the Federal District Courts. Upon such removal, the case shall "proceed as a cause originally commenced in that (the United States District) court."

In *Parry v. Delaney*, 310 Mass. 107, 37 N. E. (2d) 249 (1941), before the Supreme Judicial Court of Massachusetts the Department of Justice through the United States Attorney at Boston, then took the position that federal officers were not subject, in the state courts, to suits for damages or injunction in connection with alleged illegal conduct by them. The Supreme Judicial Court of Massachusetts so ruled.

United States Marshals and Deputy Marshals making arrests and conducting searches are "officers of the court" within 28 United States Code Section 76, *supra*. (See *Davis v. So. Carolina*, 107 U. S. 597.) For a discussion of the duties of FBI agents, comparable to those of the United States Marshal, under 5 United States Code, Sec. 300a, and 18 United States Code, Sec. 595, respectively, see *McNabb v. United States*, 318 U. S. 322, 341.

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[15]We dissent from the suggestion of the respondents in their brief in opposition, on certiorari (at p. 16) that the petitioners may secure adequate vindication of their rights by way of their motions to suppress the evidence, claimed by them to have been illegally seized, in the criminal prosecution against them, now on appeal.

Surely, the citizen should not be required to wait until he is prosecuted for crime, before he may have recourse in the federal courts to protest an unreasonable search and seizure. Were that the law, the "lawless" law-enforcement officer would be encouraged to evade criminal prosecution, in the more flagrant violations of the guarantees against unreasonable searches and seizures, in

Circuit Court below denying the petitioners' Motion to Reverse Judgment with instructions to grant leave to file an amended complaint, should be reversed.

Respectfully submitted,

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order to avoid judicial reprimand. And thus the guilty citizen would go unpunished, along with the lawless official.

Nor does the existence of federal criminal penalties for unlawful searches and seizures (18 U. S. Code, Sec. 53a) afford adequate redress. The instant case is evidence in point. Instead of prosecuting the respondents, Government counsel, low and high, have entered the lists supporting the defense of the respondents, rather than protecting the rights of the petitioners. Thus the United States Attorney, in the courts below, at government expense, has appeared in behalf of the respondents; the Solicitor General of the United States similarly appears in their behalf in this Court. If successful, the effect of their aid will be that not only will the respondents not have been prosecuted for a violation of the federal statute imposing penal sanctions for unlawful searches and seizures, but they will be immunized from civil liability for the unlawful arrest and imprisonment of the petitioners, by virtue of the lapse of the California Statute of Limitations.

That the only substantial deterrent to the "lawless enforcement of the law" and to public officers so disposed is the prospect of civil suits for damages for lawless official conduct, seems to be the lesson of experience.

Only by keeping the doors of the Federal District Courts wide open to citizen suitors seeking a vindication of their constitutional rights against federal officers who have violated them—whether the suit is for injunction or for damages—can we square our domestic judicial policy without international judicial policy towards international lawlessness.[a]

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[a]In opposing a weak international policy on international official lawlessness, Justice Robert H. Jackson, as Chief of Counsel for the United States in the prosecution of Axis War Criminals, in his official report to the President on June 7, 1945, explained that such a policy should in any event not be "inconsistent with the position we take toward our own officials, who are frequently brought to court at the suit of citizens who allege their rights to have been invaded."

APPENDIX.

Title 28, Section 41. (Judicial Code, Section 24, amended.) Original jurisdiction.—The district courts shall have original jurisdiction as follows:

(1) *"United States as plaintiff; civil suits at common law or in equity.*—First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different States, or (c) is between citizens of a State and foreign States, citizens, or subjects."

Title 5, U. S. Code, Section 300:

"Officials for detection and prosecution of crime.—For the detection and prosecution of crimes against the United States, and for the acquisition, collection, classification, and preservation of criminal identification records and their exchange with the officials of States, cities, and other institutions, the Attorney General is authorized to appoint officials who shall be vested with the authority necessary for the execution of such duties."

Title 5, U. S. Code, Section 300a:

"*Director, assistant directors, agents, and inspectors of division of investigation empowered to serve process, make arrests.*—The Director, Assistant Directors, agents, and inspectors of the Division of Investigation of the Department of Justice are empowered to serve warrants and subpoenas issued under the authority of the United States; to make seizures under warrant for violation of the laws of the United States; to make arrests without warrant for felonies which have been committed and which are cognizable under the laws of the United States, in cases where the person making the arrest has reasonable grounds to believe that the person so arrested is guilty of such felony and where there is a likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be immediately taken before a committing officer. Such members of the Division of Investigation of the Department of Justice are authorized and empowered to carry firearms."